IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3909 OF 2006

Makarand D. Sugavkar ..Petitioner

Vs.

Shri Sai Niketan Co-operative Housing Society Ltd. and ors. ..Respondents

Mr. Milind D. Sugavkar for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2006.

P.C.:

1. Heard Mr. Sugavkar the learned counsel for the petitioner who had filed Dispute No.133 of 2005 before the Co-operative Court at Mumbai. The learned Judge, who presided over the Co-operative Court No.IV at Mumbai was pleased to return the same dispute by his order dated 27/6/2005 on the ground that the court had no jurisdiction to entertain and try the same. This order came to be challenged in Appeal No.56 of 2005 before the Maharashtra State Co-operative Appellate Court, Mumbai and the learned Member of the said Appellate Court was pleased to allow the appeal by his Judgement and Order dated 3/3/2006 but signed on 21/3/2006.

2. It appears that the petitioner was apprehensive regarding the impartial conduct of his case before the Co-operative Court No.IV after the dispute was restored by the appellate order passed in his appeal and, therefore, he applied for transfer of the same from court no.IV to any other Co-operative Court at Mumbai. This transfer application no.7 of 2006 came to be rejected by the learned President of the Maharashtra State Co-operative Appellate Court, Mumbai on 9/5/2006 and hence this petition.

3. The learned President has considered the observations made by the learned Member of the Appellate Court while allowing the appeal by the Judgment and Order dated 3/3/2006 and held that the said observations could not be a material to doubt the integrity or competency of the learned Judge presiding over Co-operative Court No.IV. The application was, therefore, rejected.

4. The Co-operative Court had returned the dispute solely on the ground of want of jurisdiction and the Lower Appellate Court did not agree with the

same view. While recording the reasons in allowing the appeal, the learned Member of the Lower Appellate Court recorded some failures which could be called as ostensible failures but there was nothing to be read in the appellate court's order regarding any apprehension expressed about the competence or integrity of the learned Judge who had returned the dispute. These failures recorded by the appellate court have been and rightly so, held to be insufficient reasons to allow the transfer application filed by the petitioner. The learned counsel for the petitioner, in addition to the decisions referred before the learned President in support of the transfer application, has also relied upon the decision of the Apex Court in the case of Ravindra Singh Negi and ors. vs. Virendra Singh Negi and anr. **(2005) 10 SCC 493**. It was alleged that the learned Advocates, namely, Rajendra Singh Negi and Shailendra Singh Negi were permanent Advocates of Deharadun holding strong influence on other members of the Deharadun Bar and one of them had commenced civil litigation against the petitioner in the year 1999. It was further alleged that they were taking extra interest on account of execution of power of attorney

in favour of one of them by one of the plaintiffs in the suit. It was under these circumstances that the transfer application was moved for transfer of the suit from Deharadun to Ghaziabad. The Supreme Court entertained the request for transfer, but not to the court at Ghaziabad but the suit was directed to be transferred to a neighbouring district not far away from Deharadun so that the parties are not inconvenienced. This view taken by the Apex Court in Ravindra Sing Negi's case has no application to the instant case where the petitioner's doubts or his apprehension that he may not get fair justice or his case may not be conducted in fairness by the learned Judge of the Co-operative Court No.IV are ill-founded. In fact, the material on record, including the appellate order, does not make out any case to have such an apprehension and, therefore, no interference is called for in the order passed by the learned President of the Co-operative Appellate Court in rejecting the transfer application.

5. The petition is, therefore, rejected summarily. However, it is made clear that in case the learned Judge of the Co-operative Court No.IV, for any

reasons that may appeal to him, decides not to hear the Dispute No.133 of 2005, the learned President of the Co-operative Appellate Court is directed to assign the dispute to some other court without any delay.

(B.H. Marlapalle,J.)